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EXAMINER

AMSDELL, DANA

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/743,724	<b>Applicant(s)</b> CROSSETT ET AL.	
	<b>Examiner</b> DANA AMSDELL	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Claim Rejections under 35 U.S.C. §112

Claims 1, 2, 4 to 9, and 11 to 14 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim language including "may" and/or "optionally," Examiner acknowledges amendments to the claims to eliminate these terms and withdraws the rejection. However, in amending the claims to overcome 35 U.S.C. §112, second paragraph, a new ground(s) of rejection is created.

With regard to the claim language including "applying adjustments," Applicant's submission that a person of ordinary skill in the art, having the benefit of the detailed disclosure of the present invention, would understand the meaning of the term "applying adjustments", have been fully considered and are persuasive. However, please consider that during prosecution, an Examiner has the responsibility to give claims their broadest reasonable interpretation. The term "adjustments" embraces broad and varied application even read within the confines of the disclosure.

The 35 U.S.C. §112 rejection of claims 1, 2, 4-9, 11 and 14 has been withdrawn.

Claim Rejections under 35 U.S.C. §102

2. Applicant's arguments, with respect to the rejection(s) of claim(s) 1, 2, 4, 5, 8, 9, 11, and 12, rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Application No. 2002/0138387 ("Griffin"), have been considered but are moot in view of the new ground(s) of rejection and /or are not persuasive.

Regarding the amended claim 1 language that necessarily includes "cash call accounting record", arguments are moot in view of new grounds.

Regarding claim 2, arguments that Griffin fails to disclose all the elements - *"For example, Griffin says nothing about 'creating reversing accounting records to reverse existing accounting records in a ledger of the joint venture according to a previous equity share assignment.' The parts of Griffin that deal with 'total fund information' are cited against this feature (e.g., Fig. 2 (505) and (507), Fig. 4 (120) and para. 68).*

*Paragraph 68 outlines an example of how Griffin functions by illustrating a table with several points in time for the operating method. First, this is an example illustration to help the reader understand the method of Griffin, and nowhere does Griffin disclose, suggest, or remotely imply that historic time periods are created or maintained for any reason, let alone "to reverse existing accounting records in a ledger." Second, even if Griffin did imply this (which it does not), the table referenced in paragraph 68 has nothing to do with "creating reversing accounting records," as claimed in claim 2.*

Examiner reaffirms Griffin teaching to the creation of reverse accounting records as the term implies a redistribution from a post analysis, or 'realization' of data. Griffin does not teach going back into accounts and changing the record, and after careful

consideration of the Applicant's disclosure, changing the accounting record, is not an element in the immediate invention.

Arguments relating to amended claim 8 are considered likewise, as are claims 9, 11 and 12 depending from claim 8.

#### Claim Rejections under 35 U.S.C. §103

3. Applicant's arguments regarding the 35 U.S.C. §103(a) rejection of claims 3, 6, 7, 10, 13, and 14 as being unpatentable over U.S. Application No. 2002/0138387 ('Griffin'), in view of U.S. Patent Application No. 2007/0179872 ("Macalka") have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.1986).

Applicant argues, "Macalka was asserted for disclosing "an inter-company partnership." However, aside from Macalka's use of the term "inter-company partnership" the reference does not pertain to the specific features found in the above listed claims". Examiner respectfully submits that wherein Macalka provides by example in his specifications an embodiment of two subsidiaries of the same business entity, he none-the-less teaches an "inter-company" model of fund consolidation and share allocation, and the accounting method thereof.

In response to applicant's argument that the "mutual fund" disclosed by Griffin is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Applicant asserts "Griffin is directed toward a mutual fund, which is not a joint venture", Examiner upon careful consideration has established that Applicant's disclosure is not only silent to the specificity of the term "joint venture", but is directed to "accounting records of a business venture reflecting a new allocation of shares in the venture among a plurality of entities". Using this definition, the "mutual fund" of Griffin teaches the 'joint venture' of the immediate application.

Arguments relating to claims 3, 6, 7, 10, 13, and 14 are considered likewise, as they depend from claims 1 and 8.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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**5. Claims 1, 2, 4, 5, 8, 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin. (US 2002/0138387), here-in-after "Griffin", in view of Verdonick (US 2005/0131788), here-in-after "Verdonick".**

6. Regarding amended claims 1 and 8, Griffin teaches an automated method and apparatus (Fig. 4), as follows:

(a) receiving input selecting a time period for which adjustments to accounting records of a joint venture are to be applied where the time period includes time between a present time and a time of an inception of the venture, includes some period of time prior to the present time, (Fig. 3, step 601, ¶ 0011 and ¶0063) ; and

(b) receiving input selecting one or more types of accounting records to which the adjustments are to be applied (Fig. 3, steps 650/652)

(c) based on input received, applying adjustments to the accounting records of the joint venture (Fig. 3, steps 610-616).

Wherein Griffin is silent to the amended element of the claim, (e.g. (b) receiving input selecting ..... where one type of the accounting records includes cash call accounting records, Verdonick is not. Verdonick discloses cash call accounting records (Abstract and ¶0034).

One of ordinary skill in the art would find motivation to include "cash" as a form of equity, as cash has the added advantage in being a fluid asset.

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7. Regarding claims 2 and 9, Griffin teaches based on input received in (b):

(i) creating reversing accounting records to reverse existing accounting records in a ledger of the joint venture according to a previous equity share assignment (Fig. 2, steps 505/507, Fig. 4, elm. 120, and ¶0068) ;

(ii) creating in the joint venture ledger, for a new equity share assignment, accounting records with amounts corresponding to the existing accounting records reversed by (i) (Fig. 3, steps 601/610, Fig. 4, elm. 120, and ¶0069;

(iii) creating, in partner accounts in the joint venture ledger, accounting records corresponding to the accounting records created in (i), with amounts in proportions according to the previous equity share assignment (Fig. 4, elm. 104); and

(iv) creating, in the partner accounts in the joint venture ledger, accounting records corresponding to the accounting records created in (ii), with amounts in proportions according to the new equity share assignment (Fig. 4, elm. 120) .

8. Regarding claims 4 and 11, Griffin teaches based on input received in (b):

(vii) creating reversing accounting records, or 'performance fee (PF)' to reverse existing accounting records made to partner accounts in a ledger of the joint venture according to a previous equity share assignment (¶ 0005, where in 'performance fee', by being defined as any 'item of profit or loss which accrues differentially as between investors', is equated to the recited "call"; and Fig. 2, steps 505/507 and ¶ 0068 and Fig. 4, elm. 120);



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(viii) creating accounting records corresponding to the existing records reversed by (vii) in the partner accounts of the joint venture ledger for the new equity share assignment, but recording amounts in the same proportions as in the previous equity share assignment (§ 0011, wherein 'loss carryforward' by definition is equated to the recited " accounting records corresponding to the existing records reversed by (vii)"; and Fig. 3. steps 601/610 and § 0069 and Fig. 4, elm. 120). Griffin is silent to the feature of the necessary by amendment element "cash call", However as disclosed in the independent claims 1 and 8, Verdonick discloses cash call accounting records (Abstract and §0034).

One of ordinary skill in the art would find motivation to include "cash" as a form of equity, as cash has the added advantage in being a fluid asset.

9. Regarding claims 5 and 12, Griffin teaches:

(ix) performing a correction process to create accounting records indicating, in the partner accounts of the joint venture ledger for the new equity share assignment, a difference corresponding to calls between the previous equity share assignment the new equity share assignment (§ "Equalization Factor (EF)", and §0025).

Griffin is silent to the feature of the necessary by amendment element "cash call", However as disclosed in the independent claims 1 and 8, Verdonick discloses cash call accounting records (Abstract and §0034).

One of ordinary skill in the art would find motivation to include "cash" as a form of equity, as cash has the added advantage in being a fluid asset.

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**10. Claims 3, 6, 7, 10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Griffin” and “Verdonick” as applied to claims 1, 2, 4, 5, 8, 9, 11 and 12 above, and further in view of Macalka et al. (US 2007/0179872), here-in-after “Macalka”.**

11. Regarding claims 3 and 10, Griffin in view of Verdonick, teaches the limitations of claims 2 and 9, respectively. Neither Griffin nor Verdonick however, teach specifically to the conditional limitation of an inter-company partner associated with the joint venture. Macalka does disclose the method and apparatus of adjustments in consolidation process (v) creating, in an inter- company ledger of the joint venture, accounting records corresponding to the accounting records created in (i), with amounts in proportions according to the previous equity share assignment (Fig 2a, elms. 204/206 and ¶ 0035); and;

(vi) creating, in the inter-company ledger of the joint venture, accounting records corresponding to the accounting records created in (ii), with amounts in proportions according to the new equity share assignment (Fig. 2b, elm. 220/224 and ¶0035).

One of ordinary skill in the art would find motivation to modify the teaching of Griffin and Verdonick by the disclosure of Macalka, to include the eventuality of an inter-company partnership, as share allocations very typically have this additional complexity and necessitate inclusion in the accounting method.

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Regarding claims 6 and 13, Griffin in view of Verdonick, teaches the limitations of claims 4 and 11, and further the performing a correction process to create accounting records indicating the new equity share assignment, a difference corresponding to calls between the previous equity share assignment the new equity share assignment (§0008- "Equalization Factor" (EF), and §0025);

Neither Griffin nor Verdonick teach to the inter-company ledger. However, Macalka does disclose this in Fig. 2(b), elm. 224; and §0034).

One of ordinary skill in the art would find motivation to modify the teaching of Griffin and Verdonick by the disclosure of Macalka, to include the eventuality of an inter-company partnership, as share allocations very typically have this additional complexity and necessitate inclusion in the accounting method.

12. Regarding claims 7 and 14, , Griffin in view of Verdonick, teaches the limitations of claims 3 and 10, however neither Griffin nor Verdonick teach the performing a correction process comprising creating reversing accounting records to reverse the accounting records created in the inter-company ledger in (vi). Macalka does disclose this. (Fig. 3, elm. 310; and §0037).

One of ordinary skill in the art would find motivation to modify the teaching of Griffin and Verdonick by the disclosure of Macalka, to include the eventuality of an inter-company partnership, as share allocations very typically have this additional complexity and necessitate inclusion in the accounting method.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANA AMSDELL whose telephone number is (571)270-5210. The examiner can normally be reached on 5/4/9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. Ryan Zeender/  
Supervisory Patent Examiner, Art Unit 3627